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OFFICE OF PETITIONS

In re Patent of Op Den Camp et al. : DECISION ON REQUEST FOR
Patent No. 7,622,284 : RECONSIDERATION OF
Issue Date: November 24, 2009 : PATENT TERM ADJUSTMENT AND
Application No. 10/500,872 : NOTICE OF INTENT TO ISSUE
Filed: December 6, 2004 : CERTIFICATE OF CORRECTION
Docket No. OP DEN CAMP-1 : :

This is a decision on the petition filed on January 22, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred sixty-four (564) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by five hundred sixty-four (564) is **GRANTED to the extent indicated herein**.

With respect to patentees' argument that the Office miscalculated the period of delay under 37 CFR 1.703(a)(1), this argument will not be addressed because it was untimely raised.

37 CFR 1.705(d), provides that:

If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. *Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.* (emphasis added).

If applicants desired to dispute the adjustment pertaining to 37 CFR 1.703(a)(1), applicants should have filed a petition under 37 CFR 1.705(b) after the mailing of the Notice of Allowance.

The adjustment pertaining to 37 CFR 1.703(a)(1) can not be addressed in a petition under 37 CFR 1.705(d).

With respect to the B period of delay: In an international application, the B period of delay is based on the failure of the Office to issue a patent within three years after the national stage commences under 35 U.S.C. 371(b) or (f). *See* 1.702(b). The national stage commenced in this application on July 23, 2004. Unless a Request for Continued Examination (“RCE”) is filed, the period of B Delay ends of the date the patent issues. In this case, a RCE was filed on March 31, 2008. Per 35 U.S.C. 154(b)(1)(B)(i), B Delay does not include “any time consumed by continued examination of the application requested by the applicant under section 132(b).”

The period of B Delay in this case is 251 days, not 252 days as asserted by patentees, beginning on July 24, 2007, the day after the date three years after the commencement date, and ending on March 30, 2008, the day before the date the RCE was filed. *See* 1.703(b).

Therefore, correct patent term adjustment is 427 days, which is the sum of 429 days of delay under 35 U.S.C. § 154(b)(1)(A) (“A Delay”) and 251 days of B Delay, reduced by 253 days for patentees’ delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred twenty-seven (427)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.


Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,622,284 B2

DATED : November 24, 2009

DRAFT

INVENTOR(S) : Op Den Camp et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 176 days {

Delete the phrase "by 176 days" and insert – by 427 days--